

## **REMARKS**

Applicant's representative and Examiner have spoken on numerous occasions over the period from August 11-September 8, 2003. Applicant's representative has repeatedly requested a telephone interview with the Examiner to discuss the Office Action. Examiner has repeatedly stated that the file has been misplaced and that a request for the file has been submitted. On September 8, the Examiner suggested that a response be filed by Applicant in an effort to cause the file to be located because the Examiner's efforts to locate the file have been fruitless. Thus, Applicant has been denied a telephone interview. Examiner assured Applicant's representative, that in light of the Office's inability to locate the file and therefore permit the telephone interview to take place, that every possible consideration for efficient prosecution would be effected upon receipt of the Applicant's response. Examiner assured Applicant's representative that a telephone interview would also be forthcoming upon receipt of Applicant's response.

The Office Action was made Final on First Action. Applicant respectfully disagrees with Examiner's decision to make the Office Action Final on First Action and respectfully requests that the finality of the rejections be withdrawn.

The Examiner suggests that all of the pending claims are drawn to the same invention of the earlier application 09/482,197 and could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application. Applicant disagrees and submits that application 09/482,197 is now abandoned and the Examiner is unfairly preventing Applicant from continuing prosecution of the instant claimed invention.

Further, Applicant disagrees that the claims could have been finally rejected by the art of record, otherwise those rejections would be made in the current Office Action. Moreover, Applicant respectfully submits that the proposed rejections set forth in the instant Office Action are improper and should be withdrawn. Applicant asserts that proper analysis of the cited references results in the finding that none of the cited references of record are statutorily applicable toward rejecting any of the claims in the instant application and that the claims are allowable. Applicant requests that the finality

of the Office Action be withdrawn, the Applicant be given a fair opportunity to advance prosecution in the application, and the application be passed to issue.

Claims 1-20 are currently pending in the application. Claims 1-20 were rejected. Applicant requests reconsideration of the application in view of the above amendments and following remarks.

Applicant's claim for the benefit of priority has been objected to in the Office Action in paragraph 1 on page 2. Applicant is unclear what applications the Examiner considers to which the Applicant is claiming the benefit of priority. Applicant respectfully asserts that a claim of priority supported by a chain of copendency has been clearly outlined in the specification and the associated filing and transmittal papers. However, for the Examiner's sake and the sake of advancing prosecution to allowance, Applicant will again outline the priority claim.

The instant application 09/960,265 was filed on 09/21/2001;  
and is a continuation of 09/849,776 which was abandoned on 05/04/2001;  
which is a continuation of 09/482,197 which was abandoned on 01/12/2000;  
which is a continuation of 08/941,496 which was abandoned on 09/30/1997;  
which is a continuation-in-part of 08/270,533 which issued as Patent Number 5,673,031 on 07/05/1994;  
which is a continuation-in-part of 07/802,348 which was abandoned on 12/04/1991;  
which is a continuation-in-part of 07/790,946 which was abandoned on 11/12/1991.

Therefore, Applicant claims continuity of copendency, at least through November 12, 1991, for the instant application. Examiner cited MPEP 201.08 as support for the objection. Applicant respectfully submits that the instant application is in compliance with MPEP 201.08.

MPEP 201.08 states:

[An] alleged continuation-in-part application should be permitted to claim benefit of the filing date of an earlier nonprovisional application if the alleged

continuation-in-part application complies with the following formal requirements of 35 U.S.C. § 120:

(A) ... at least one common inventor;

(B) ... filed before the patenting or abandonment of or termination of proceedings on ... an application similarly entitled to the benefit of the filing date of the first application;

(C) The alleged continuation-in-part "contains or is amended to contain a specific reference to the earlier filed application.

In an effort to establish compliance, Applicant respectfully asserts that Robert C. Meier is a common inventor on all of the above named applications; that all Continuations and Continuations-in-part were filed before termination of proceedings of their respective parent applications; and that the instant application contains a specific reference to all of the earlier filed applications. Therefore, the application is in compliance with 35 U.S.C. § 120 and MPEP 201.08. Applicant asserts that the objection to the claim of priority is now moot and requests that the objection be withdrawn and the application passed to issue.

In paragraph 2 on page 2 of the Office Action, the specification was objected to for failing to provide the serial number for the application cited in the specification. The specification has been amended to overcome the objection. The objection being moot in view of the amendment to the specification, Applicant requests that the objection be withdrawn and the application passed to issue.

On pages 2 and 3 of the Office Action, the abstract was objected to for being narrative in form and exceeding the 150 word limit. The abstract has been amended to overcome the objection. The objection being moot in view of the amendment to the abstract, Applicant requests that the objection be withdrawn and the application passed to issue.

In paragraph 3 on page 4 of the Office Action, claim 1 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable

over claim 1 of US patent 5,673,031 to (Meier '031). Applicant disagrees and objects to the proposed application of the double patenting statute for two so vastly different claims.

The Applicant sets forth in claim 1, a method of beginning data exchange over an RF communication link between a polling device and a sending device wherein the polling device has an interpoll gap time, the method comprising identifying by the sending device that the RF communication link is clear throughout a period which is at least as long as the maximum possible interpoll gap time under conditions solely when the RF communication link is heavily loaded, and transmitting a request for poll frame by the sending device.

In contrast, claim 1 of Meier '031 discloses a method utilized by each of a plurality of sending devices for beginning and conducting a data exchange over an RF communication channel to a polling device wherein at least one of a plurality of sending devices cannot always detect transmissions originated by the other of the plurality of sending devices, the method comprising the steps of, after identifying data to be exchanged with a polling device, converting such identified data into series of data segments, identifying a period of time that is at least as long as a predetermined time period during which no communication can be detected on RF communication channel, transmitting a request for poll frame to the polling device, and sequentially exchanging the series of data segments as prompted by a corresponding series of poll frames transmitted by the polling device, wherein each two consecutive poll frames transmitted are separated by the predetermined time period with one of the series of data segments transmitted therebetween.

Applicant respectfully asserts that suggesting that these two claims teach subject matter sufficient to warrant a double patenting rejection is false and a clear abuse of the intention of the double patenting statute. The two claims are so different from one another that the Applicant has difficulty finding similarities therebetween. Thus, because the claims are so different, Applicant requests that the double patenting rejection be withdrawn and the application passed to issue.

In paragraph 4 on page 5 of the Office Action, claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable under Flammer, III et al. (Flammer) and the publication referred to as Stallings. Applicant respectfully traverses the rejections.

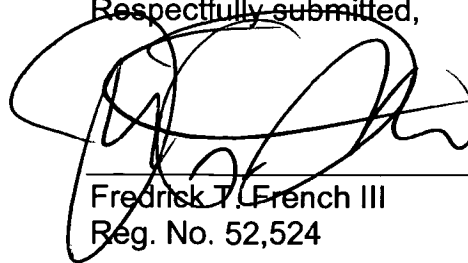
Neither Flammer nor Stallings qualify as prior art references because of the priority claim set forth above in the instant amendment and response. Applicant has claimed and established priority to at least 11/12/1991. Flammer was filed on 02/08/1994 and was issued on 11/28/1995. Stallings was published in 1997. The Applicant respectfully submits that the proposed rejection under the proposed combination of Flammer and Stallings is improper because the references do not qualify as prior art and requests that the rejection be withdrawn. Applicant requests that the application be passed to issue.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Dated: September 10, 2003

Respectfully submitted,



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